

Restaurants are not be liable for Retailers' Occupation Tax liability when they provide meals to employees free of any charge, so long as such employees are entitled to no additional compensation if they fail to eat such meals at the restaurant's place of business. In these situations the restaurant employer would incur an Illinois Use Tax liability. See 86 Ill. Adm. Code 130.2050. (This is a GIL).

March 9, 2000

Dear Xxxxx:

This letter is in response to your letter dated December 24, 1999 that we received on January 13, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

My client is in the retail restaurant business and has one or more locations in your state. Your advice is requested as to the application of sales and use tax to the following activities:

1. Meals furnished on premises by employer to employees. These meals are furnished at no charge and for the convenience of the employer. Employees are both management and non-management.
2. Complimentary meals provided on premises at no charge to customers for promotional purposes.

Thank you for your earliest assistance in this matter.

We have enclosed a copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

The sale of soft drinks is always subject to the high rate of tax. See Section 130.310(b)(5). Gross receipts from sales of food that has been prepared for immediate consumption do not qualify for the reduced rate of tax, and sales of hot food are sales of food for immediate consumption that are always subject to the high rate of tax, 86 Ill. Adm. Code 130.310(b)(2) and (b)(2)(C).

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Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final act of preparation by the retailer. Food items sold by restaurants for immediate consumption are subject to the high rate of tax.

Regarding meals furnished by employers to employees, please be informed a restaurant would not be liable for Retailers' Occupation Tax liability when it provides meals to employees free of any charge, so long as such employees are entitled to no additional compensation if they fail to eat such meals at the restaurant's place of business. See 86 Ill. Adm. Code 130.2050, enclosed. In these situations the restaurant employer would incur an Illinois Use Tax liability based upon the cost price of the food. The base (cost price of the food that is consumed) upon which this Use Tax is calculated, in the absence of evidence establishing a lower figure, is presumed to be 75 cents per meal. See Section 130.2050(c). Food used in such employee meals is subject to the low 1% rate, plus any applicable local taxes, because it constitutes food used by the employer.

If employers charge for employee meals, they incur Retailers' Occupation Tax on the gross receipts received from such sales, even if the sales are at a discounted price. The high rate of tax (6.25% plus applicable locals) applies to these sales because the employer is selling food for immediate consumption.

A restaurant would also incur a Use Tax liability at the low rate (1%) if it were to provide meals gratis to customers for promotional purposes. The tax base would be the restaurant's cost price of the food items.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.